

EXHIBIT 1

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

WELCOME PROPERTIES 201, LLC,

Plaintiff,

v.

NATIONAL FIRE & MARINE INSURANCE CO.,

Defendant.

No: D-307-CV-2016-02325
Judge Manuel I. Arrieta

**AMENDED COMPLAINT FOR BREACH OF CONTRACT AND
FIDUCIARY DUTY, INSURANCE BAD FAITH, VIOLATIONS OF
THE INSURANCE CODE AND UNFAIR TRADE PRACTICES ACT**

Plaintiff, Welcome Properties 201, LLC, appears through its attorneys, Almanzar & Youngers, P.A. (Steven R. Almanzar), for its Complaint against Defendant, National Fire & Marine Insurance Co., alleges as follows:

Parties & Jurisdiction

1. At all times material herein Plaintiff, Welcome Properties 201, LLC (hereinafter referred to as "Welcome Properties" or "Plaintiff"), is a New Mexico corporation with its principal place of business at 201 E University, Las Cruces, New Mexico 88005.
2. Defendant, National Fire & Marine Insurance Co. (hereinafter referred to as "National Fire & Marine" or "Defendant"), is a Nebraska corporation with its principal place of business at 1214 Douglas Street, Omaha, Nebraska 68102.

3. Defendant is authorized to do business in the State of New Mexico and was engaged in the business of underwriting and issuing property and casualty insurance policies.
4. The events giving rise to this action took place in Las Cruces, New Mexico.
5. This Court has jurisdiction over the subject matter and the parties to this litigation.
6. Venue is proper in this Court.

General Allegations

7. Plaintiff re-alleges paragraphs 1 through 6 of the Complaint as though fully set forth herein.
8. At all times relevant Plaintiff owned the property located at 201 E University, Las Cruces, New Mexico, 88005 (hereinafter referred to as "the Property").
9. Defendant issued a Common Policy to Plaintiff, policy number 12 PRM002189-03 with an effective date December 31, 2015 through December 31, 2016, which insured the Property (hereinafter referred to as "the Policy"). The Policy is attached as Exhibit A.
10. Pursuant to the terms of the Policy, Defendant agreed to pay for direct physical loss or damage to Covered Property at the location described in the Declarations caused by or resulting from any Covered Cause of Loss.
11. Plaintiff has substantially complied with all conditions of the Policy regarding the May Claim.

12. To date, Defendant has failed to pay Plaintiff pursuant to the Policy for all its losses and damages in the May Claim.

COUNT I

**(Breach of Contract and Covenant of Good Faith
and Fair Dealing as to Claim No. 12-30-376005)**

13. Plaintiff incorporates and re-alleges paragraphs 1 through 12 of the Complaint as though fully set forth herein.
14. On or about February 6, 2016, while the Policy was in full force and effect, the Property was directly and physically damaged by a Covered Cause of Loss, namely wind and hail damage.
15. Plaintiff duly submitted a claim, Claim No. 12-30-376005 ("hereinafter referred to as "Claim 6005"), to the Defendant under the Policy for its losses and damages.
16. Plaintiff had a contract with Defendant to provide coverage as set forth in the Policy and to conform with Plaintiff's reasonable expectations of coverage thereunder.
17. There was a covenant of good faith and fair dealing in the contract entered into between Plaintiff and Defendant.
18. Plaintiff substantially performed all conditions required by the Policy, including paying all premiums, giving prompt notice to Defendant of the loss and damage, and cooperating with Defendant's investigation of the loss and damage.
19. As a result, it is Defendant's duty to pay Plaintiff for all of the losses and damages sustained to the Property.

20. Although requested to do so, Defendant has failed and/or refused to pay Plaintiff for all their losses and damages in breach of the express terms of the Policy.
21. Defendant has breached its contract with Plaintiff, in bad faith, as well as the covenant of good faith and fair dealing implied within the contract, in the following particulars:
 - a. By failing to pay Plaintiff's legitimate claim;
 - b. By misrepresenting to Plaintiff pertinent facts or policy provisions relating to coverages at issue;
 - c. By failing to act fairly and honestly with Plaintiff;
 - d. Placing its interest above those of its insured, Plaintiff.
22. As a direct and proximate result of Defendant's bad faith breach of contract, Plaintiff has sustained damages and has been forced to file this suit to enforce the terms and conditions of the Policy with Defendant.
23. Defendant's breach of contract and the covenant of good faith and fair dealing was willful, wanton, reckless, malicious, oppressive and in bad faith in disregard of Plaintiff's rights under the Policy.

COUNT II

(Breach of Contract and Covenant of Good Faith and Fair Dealing as to Claim No. 12-30-393551)

24. Plaintiff incorporates and re-alleges paragraphs 1 through 23 of the Complaint as though fully set forth herein.

25. On or about May 18, 2016, while the Policy was in full force and effect, the Property was directly and physically damaged by a Covered Cause of Loss, namely wind and hail damage.
26. Plaintiff duly submitted a claim, Claim No. 12 30 393551 ("hereinafter referred to as "Claim 3551"), to the Defendant under the Policy for its losses and damages.
27. Plaintiff had a contract with Defendant to provide coverage as set forth in the Policy and to conform with Plaintiff's reasonable expectations of coverage thereunder.
28. There was a covenant of good faith and fair dealing in the contract entered into between Plaintiff and Defendant.
29. Plaintiff substantially performed all conditions required by the Policy, including paying all premiums, giving prompt notice to Defendant of the loss and damage, and cooperating with Defendant's investigation of the loss and damage.
30. As a result, it is Defendant's duty to pay Plaintiff for all of the losses and damages sustained to the Property.
31. Although requested to do so, Defendant has failed and/or refused to pay Plaintiff for all their losses and damages in breach of the express terms of the Policy.
32. Defendant has breached its contract with Plaintiff, in bad faith, as well as the covenant of good faith and fair dealing implied within the contract, in the following particulars:

- a. By failing to pay Plaintiff's legitimate claim;
 - b. By misrepresenting to Plaintiff pertinent facts or policy provisions relating to coverages at issue;
 - c. By failing to act fairly and honestly with Plaintiff;
 - d. Placing its interest above those of its insured, Plaintiff.
33. As a direct and proximate result of Defendant's bad faith breach of contract, Plaintiff has sustained damages and has been forced to file this suit to enforce the terms and conditions of the Policy with Defendant.
34. Defendant's breach of contract and the covenant of good faith and fair dealing was willful, wanton, reckless, malicious, oppressive and in bad faith in disregard of Plaintiff's rights under the Policy.

COUNT III

(Insurance Bad Faith and Breach of Fiduciary Duty as to Claim 6005)

35. Plaintiff incorporates and re-alleges paragraphs 1 through 34 of the Complaint as though fully set forth herein.
36. Defendant had a fiduciary duty to Plaintiff, to deal with Plaintiff in good faith in all matters pertaining to the performance of their insurance contract and policy, including their handling of Claim 6005.
37. Defendant has breached its fiduciary duty of good faith and fair dealing under the insurance contract by, *inter alia*, the following:
- a. Through a course of dealing and conduct continuing through the filing of this lawsuit, by unreasonably and improperly denying Plaintiff's claim;

- b. By unreasonably delaying the payment of Plaintiff's property loss claim to the extent of the available property damage coverages;
 - c. Negligently or intentionally misrepresenting the coverage, terms and conditions of Plaintiff's policy with Defendant;
 - d. Failing to act fairly and honestly as required under the implied covenant of good faith and fair dealing incorporated in within its policy with Plaintiff; and,
 - e. Placing its interests above those of their insured, Plaintiff.
38. Defendant's conduct has been willful, wanton, reckless, malicious, indifferent, and/or in bad faith disregard of Plaintiff's rights.
39. Plaintiff has sustained damages as a proximate result of Defendant's actions, omissions, or failures to act.

COUNT IV

(Insurance Bad Faith and Breach of Fiduciary Duty as to Claim 3551)

40. Plaintiff incorporates and re-alleges paragraphs 1 through 39 of the Complaint as though fully set forth herein.
41. Defendant had a fiduciary duty to Plaintiff, to deal with Plaintiff in good faith in all matters pertaining to the performance of their insurance contract and policy, including their handling of Claim 3551.
42. Defendant has breached its fiduciary duty of good faith and fair dealing under the insurance contract by, *inter alia*, the following:

- a. Through a course of dealing and conduct continuing through the filing of this lawsuit, by unreasonably and improperly denying Plaintiff's claim;
 - b. By unreasonably delaying the payment of Plaintiff's property loss claim to the extent of the available property damage coverages;
 - c. Negligently or intentionally misrepresenting the coverage, terms and conditions of Plaintiff's policy with Defendant;
 - d. Failing to act fairly and honestly as required under the implied covenant of good faith and fair dealing incorporated in within its policy with Plaintiff; and,
 - e. Placing its interests above those of their insured, Plaintiff.
43. Defendant's conduct has been willful, wanton, reckless, malicious, indifferent, and/or in bad faith disregard of Plaintiff's rights.
44. Plaintiff has sustained damages as a proximate result of Defendant's actions, omissions, or failures to act.

COUNT V

(Violation of the Unfair Trade Practices Act as to Claim 6005)

45. Plaintiff incorporates and re-alleges paragraphs 1 through 44 of the Complaint as though fully set forth herein.
46. Defendant violated the New Mexico Unfair Trade Practices Act, NMSA 1978 § 57-12-1 *et seq.*, by some or all of the acts described above and by:

- a. Defendant sought to, and did in fact, take advantage of Plaintiff's lack of knowledge, ability, experience or capacity to a grossly unfair degree;
 - b. Failing to deliver the quality or quantity of goods or services contracted for;
 - c. Failing to disgorge unearned premiums to Plaintiff resulting in a gross disparity between the value received by Plaintiff and the price Plaintiff paid; and.
 - d. By stating the Defendant's insurance policy involved rights, remedies, or obligations that it does not involve or are otherwise contrary to well established law.
47. Defendant's actions, omissions, and failure to act, singularly or in combination, were done knowingly and willfully.
48. Plaintiff sustained damages as a direct and proximate result of Defendant's actions, omissions, and failures to act.

COUNT VI

(Violation of the Unfair Trade Practices Act as to Claim 3551)

49. Plaintiff incorporates and re-alleges paragraphs 1 through 48 of the Complaint as though fully set forth herein.
50. Defendant violated the New Mexico Unfair Trade Practices Act, NMSA 1978 § 57-12-1 *et seq.*, by some or all of the acts described above and by:

- a. Defendant sought to, and did in fact, take advantage of Plaintiff's lack of knowledge, ability, experience or capacity to a grossly unfair degree;
 - b. Failing to deliver the quality or quantity of goods or services contracted for;
 - c. Failing to disgorge unearned premiums to Plaintiff resulting in a gross disparity between the value received by Plaintiff and the price Plaintiff paid; and.
 - d. By stating the Defendant's insurance policy involved rights, remedies, or obligations that it does not involve or are otherwise contrary to well established law.
51. Defendant's actions, omissions, and failure to act, singularly or in combination, were done knowingly and willfully.
52. Plaintiff sustained damages as a direct and proximate result of Defendant's actions, omissions, and failures to act.

COUNT VII

(Violations of the Insurance Code as to Claim 6005)

53. Plaintiff incorporates and re-alleges paragraphs 1 through 52 of the Complaint as though fully set forth herein.
54. Defendant, in the handling of Claim 6005, violated the New Mexico Insurance Code, NMSA 1978 § 59 A-16-1 *et seq.* and § 59 A-16-4, by its actions described and by:

- a. Misrepresenting the coverage terms and conditions of the policy to Plaintiff;
 - b. Misrepresenting and/or omitting pertinent facts or policy provisions related to coverages at issue;
 - c. Not attempting in good faith to effectuate prompt, fair, and equitable settlement of its insured's claim in which liability had become reasonably clear;
 - d. Failing to provide the insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim;
 - e. Failing to acknowledge and act reasonably promptly upon communications with respect to claims from insured arising under the policy.
55. Defendant knowingly committed on or more of the actions described herein.
56. Defendant's conduct was willful, wanton, malicious, indifferent, and/or in bad faith disregard of Plaintiff's rights.
57. Plaintiff sustained damages as a direct and proximate result of Defendant's actions, omissions, or failure to act.

COUNT VIII

(Violations of the Insurance code as to Claim 3551)

58. Plaintiff incorporates and re-alleges paragraphs 1 through 57 of the Complaint as though fully set forth herein.

59. Defendant, in the handling of Claim 3551, violated the New Mexico Insurance Code, NMSA 1978 § 59 A-16-1 *et seq.* and § 59 A-16-4, by its actions described and by:
- a. Misrepresenting the coverage terms and conditions of the policy to Plaintiff;
 - b. Misrepresenting and/or omitting pertinent facts or policy provisions related to coverages at issue;
 - c. Not attempting in good faith to effectuate prompt, fair, and equitable settlement of its insured's claim in which liability had become reasonably clear;
 - d. Failing to provide the insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim;
 - e. Failing to acknowledge and act reasonably promptly upon communications with respect to claims from insured arising under the policy.
60. Defendant knowingly committed on or more of the actions described herein.
61. Defendant's conduct was willful, wanton, malicious, indifferent, and/or in bad faith disregard of Plaintiff's rights.
62. Plaintiff sustained damages as a direct and proximate result of Defendant's actions, omissions, or failure to act.

Prayer For Relief

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

- A. For compensatory and treble damages in an amount to be ascertained at trial;
- B. For incidental and consequential damages;
- C. For an award of attorney's fees under § 39-2-1, §59-16-30 and §57-12-10;
- D. For an award of costs incurred;
- E. For exemplary and punitive damages to deter Defendant and others from the commissions of like offenses;
- F. For pre- and post-judgment interest; and
- G. For such additional and further relief as the Court may deem just and proper.

Plaintiff hereby requests a trial by jury on all issues.

Respectfully submitted,

ALMANZAR & YOUNGERS, P.A.

/s/ Steven R. Almanzar

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Attorney for Plaintiffs

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*Attorneys for Plaintiff
(to appear Pro Hac Vice)*

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

WELCOME PROPERTIES 201, LLC,

Plaintiff,

v.

NATIONAL FIRE & MARINE INSURANCE CO.,

Defendant.

No: D-307-CV-2016-02325
Judge:Arrieta, Manuel I.

JURY DEMAND

Plaintiff Welcome Properties 201, LLC, by and through its attorney, appears and demands a trial by a six person jury of all issues triable of right by jury and tenders the sum of \$150.00 for the jury fee.

Respectfully submitted,

ALMANZAR & YOUNGERS, P.A.

/s/ Steven R. Almanzar

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*Attorneys for Plaintiff
(to appear Pro Hac Vice)*

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

WELCOME PROPERTIES 201, LLC,
Plaintiff,

vs

D-307-CV- 2016-02325

Judge Manuel I Arrieta

NATIONAL FIRE & MARINE INSURANCE CO.,
Defendant.

**ORDER REQUIRING SCHEDULING REPORTS
and a DISCOVERY PLAN, EXPERT WITNESS DISCLOSURE,
and LIMITING STIPULATIONS TO ENLARGE TIME
FOR RESPONSIVE PLEADINGS**

IT IS SO ORDERED:

- A.** Plaintiff shall serve a copy of this order on each defendant with the summons and complaint and file a certificate of such service. Parties other than plaintiffs who assert claims against others who have not been served with this order shall serve a copy of this order on those against whom they assert claims with the pleading asserting such claims and shall file a certificate of such service.
- B.** Within sixty (60) days after the complaint is filed, parties of record shall file a Scheduling Report (LR3-502) with copies to opposing parties and the assigned judge. Parties shall confer and are encouraged to file a Joint Scheduling Report, LR3-Form 2.12 NMRA for Track A or LR3-Form 2.13 for Tracks B and C (*see Appendix to the Local Rules for all forms*), or, if they cannot agree, file an individual Scheduling Report, LR3-Form 2.13 NMRA.
- C.** Any party who enters the case more than sixty (60) days after the filing of the initial pleading shall file a Scheduling Report within ten (10) days and deliver a copy to the assigned judge.

- D.** If all parties are not of record within sixty (60) days after the filing date of the initial pleading, each party making a claim against one or more absent parties (*Plaintiff for Defendants, Third-Party Plaintiffs for Third-Party Defendants, etc.*) shall, within five (5) business days after the 60th day, file with the court, serve parties of record and deliver a copy to the assigned judge, a written explanation following LR3-Form 2.14 NMRA, "Delay in Putting the Case at Issue".
- E.** Counsel or parties who do not have attorneys may not stipulate to an enlargement of time greater than fourteen (14) days for the filing of a responsive pleading without a motion and order. The motion shall state with particularity the reason an enlargement is in the best interests of the parties. A copy of the motion and stipulation shall be delivered to all parties as well as counsel. The enlargement requested shall be for a specified time.
- F.** When all parties have been joined and the case is at issue, the parties shall immediately notify in writing the assigned judge and the alternative dispute resolution coordinator.
- G.** If appropriate, the court will refer this matter to settlement facilitation under Part VII of the Local Rules of the Third Judicial District Court.
- H.** For cases subject to arbitration under Local Rule LR3-706 NMRA, the parties may file a written stipulation to waive facilitation with a copy to the ADR coordinator and the assigned judge within sixty (60) days after the initial complaint has been filed or ten (10) days after all parties are joined if LR3-Form 2.14 NMRA has been filed. If the parties cannot stipulate, the party seeking waiver of facilitation may file a motion for relief from facilitation.
- I.** Within seventy-five (75) days from the date the complaint was filed, or fifteen (15) days after the case is at issue if LR3-Form 2.14 NMRA has been filed, the parties shall either:

 - (1) stipulate to a discovery plan and file the stipulation with the court, or
 - (2) request a hearing to establish a discovery plan pursuant to Paragraph B of Rule 1-016 NMRA.

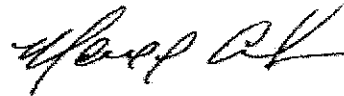
- (3) In the absence of a stipulated discovery plan or a timely request from a party for a hearing to establish a discovery plan, the following plan shall go into effect:

Within one hundred (100) days after the complaint was filed or fifteen (15) days after a party has entered the suit, whichever is the later date, each party shall provide to all other parties:

- a. The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues raised by the pleadings, identifying the subjects of the information;
- b. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues raised by the pleadings;
- c. A computation of any category of damages claimed by the disclosing party, providing copies or making available for inspection and copying the documents or other evidentiary materials and medical records and opinions, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;
- d. For inspection and copying, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;
- e. If the medical condition of a party is at issue, such party shall give a medical release authorization to opposing parties. The parties shall confer regarding the nature and extent of the release and stipulate, if possible. If the parties cannot agree, each party shall file a memorandum with a proposed medical release authorization advocating that party's proposed form to the court. A copy of the

memorandum and proposed form shall be delivered to the assigned judge. Rule 1-007.1 NMRA shall apply.

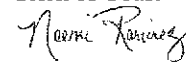
- J.** Pursuant to Rule 1-026(E) NMRA, parties shall reasonably supplement discovery required in Subparagraphs (3)(a) through (e) of Paragraph I of this Order.
- K.** Intent to Call Expert Witness - Disclosure. No later than sixty (60) days after filing their respective complaint or responsive pleading, all parties shall exchange a "Notice of Intent to Call Expert Witness(es)". The parties shall list the names, addresses and phone numbers for all anticipated experts, including a brief summary of the subject matter of each witness' testimony. If an expert has not yet been identified by a party, the parties must list the specialized area(s) in which an expert is anticipated to be retained and a brief summary of the areas or issues on which the expert is expected to testify on. All parties are to observe their continuing duty to timely supplement discovery and shall further abide by the requirements of section 8 (A-E) of the 07/15/2014 attachment to the scheduling order filed, with respect to each expert listed.



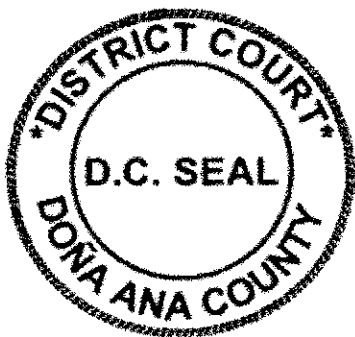
Hon. Manuel I Arrieta, District Court Judge

Delivered to Plaintiff on: October 19, 2016.

Claude Bowman
Clerk of Court



Deputy – Noemi Ramirez



STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

WELCOME PROPERTIES 201, LLC,

Plaintiff,

v.

NATIONAL FIRE & MARINE INSURANCE CO.,

No: D-307-CV-2016-02325

Judge Manuel I. Arrieta

Defendant.

COURT ANNEXED ARBITRATION CERTIFICATION

Plaintiffs, by and through undersigned counsel, pursuant to Third Judicial District
Local Rule, Rule LR3-706B, certify as follows:

- ☐ This party seeks only a money judgment and the amount sought does not
exceed twenty-five thousand dollars (\$25,000.00) exclusive of punitive
damages, interest, costs and attorney's fees.
- ☒ This party seeks relief other than a money judgment and/or seeks relief in
excess of twenty-five thousand dollars (\$25,000.00) exclusive of punitive
damages, interest, costs and attorney's fees.

Respectfully submitted,

ALMANZAR & YOUNGERS, P.A.

/s/ Steven R. Almanzar

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RECEIVED

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